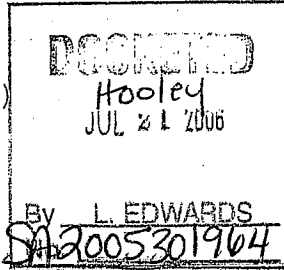


EXHIBIT 7

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2 Attorney at Law
3 1 Point St. George Place
4 Crescent City, CA 95531
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FILED
DEL NORTE
CLERK OF THE COURT
2006 JUL 17 AM 11:59
BY C. Cumor
DEPUTY

7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF DEL NORTE

9
10 In re) No: HCPB 05-5242
11 Arcadio Acuna, C-43165,) DENIAL TO RESPONDENT'S RETURN
12 Petitioner,)
13)
14 On Habeas Corpus)

15 Petitioner, Arcadio Acuna, by and through legal counsel
16 responds to the Return filed by Respondent as follows:

17 1. Petitioner admits he is in the custody of the
18 California Department of Corrections and Rehabilitation (CDCR)
19 and is serving three consecutive life sentences following a
20 conviction in Santa Clara County Superior Court.
21

22 2. Petitioner admits he is not challenging the validity of
23 his conviction, but rather has asserted that he was denied
24 minimal due process requirements relating to the validation
25 process that labeled him a member of a prison gang when
26 confidential information relied on was not disclosed before the
27 validation package was submitted to the LEIU denying Petitioner
28
29

1 the opportunity to present his view of the material to the actual
2 decision maker.

3 3. Petitioner admits that the CDCR has established a
4 process for validating prisoners as gang members or associates as
5 contained in the Code of Regulations and asserts that the
6 criteria for gang membership as opposed to gang association is
7 clearly distinct and not at all interchangeable.
8

9 4. Petitioner admits that prisoners validated as members
10 or associates of prison gangs are routinely placed in
11 Administrative Segregation and ordered to serve indeterminate
12 terms in the Pelican Bay State Prison Security Housing Unit
13 (PBSP-SHU).
14
15

16 5. Petitioner admits that prisoners may submit to the
17 debriefing process to obtain a "gang drop-out" designation by
18 informing on other prisoners, but denies that prisoners serving
19 indeterminate terms of segregation are considered every 180 days
20 for release to the general population. This court has previously
21 recognized classification committees at PBSP are simply not
22 inclined, or empowered to overturn or even question a prisoner's
23 validation once it has been imposed by the LEIU, and a review of
24 Petitioner's prison file shows that even though he sought, at
25 every opportunity, to have his case reviewed because obvious of
26 due process violations, no classification committee has ever
27
28
29

1 forwarded his concerns to the IGI for investigation. This writ is
2 the result of those violations.

3 6. Petitioner admits that he previously served ten years
4 in PBSP-SHU from 1990-2000 after being validated as an associate
5 of a prison gang, and was subsequently released to the general
6 population for four years after being granted "inactive" status
7 in May 2000.
8

9 7. Petitioner admits that he was told by IGI Lt. Garcilazo
10 in December 2003 that a validation package was being submitted to
11 the LEIU and reasserts that the three source items relied upon
12 were not disclosed in any manner whatsoever prior to the
13 validation package being submitted. Respondents concede that
14 Petitioner was not given an opportunity to present a defense to
15 the specific allegations of gang activity to the actual decision
16 maker (i.e., LEIU) at or prior to the time a decision was to be
17 made. As a matter of fact, the first time Petitioner was ever
18 made aware of the specific charges made against him was on June
19 16, 2006, when CCII Hawke provided the twenty-seven disclosure
20 forms prior to the interview conducted on June 19, 2006.
21
22
23
24

25 8. Petitioner denies that a prisoner released to the
26 general population after being granted "inactive" status may be
27 re-validated and returned to the SHU based on one source item.
28 Respondent completely misreads or misinterprets the Code of
29

1 Regulation's by claiming this court was incorrect in finding that
2 three independent source items are required to validate a
3 prisoner as active by completely ignoring the language of CCR
4 3378(F)(2), which states: "The procedures relating to the initial
5 validation or rejection of gang members or associates as
6 described in this section {3378(C)(1-8)} shall be followed when
7 reviewing the present status of an inactive gang member or
8 associate."
9
10

11 9. Petitioner admits that Respondent's contend that
12 he was re-validated on January 20, 2004, as a member of a
13 prison gang, but denies Respondent's allegation (in Footnote
14 1) that Petitioner's erroneous validation as a member should
15 have no impact on these proceedings, as ultimately, some two
16 and a half years after being given an indeterminate term of
17 segregation the three source items were properly disclosed
18 and Petitioner was finally given an opportunity to present a
19 defense against allegations of gang activity in June, 2006.
20
21
22
23

24 10. Petitioner admits that after the validation
25 package was submitted to the LEIU in December 2003, on March
26 1, 2004, he was transferred to the general population of
27 Calipatria State Prison.
28
29

1 11. Petitioner admits that he was placed in
2 Administrative Segregation on March 05, 2004, at Calipatria
3 State Prison when prison officials there were informed
4 Petitioner had been validated as an active member of a
5 prison gang on January 20, 2004.
6

7 12. Petitioner admits he made an appearance before a
8 classification committee at the Calipatria State Prison on
9 March 14, 2004, but denies he expressed no disagreement with
10 committee's decision, that he did not challenge his
11 validation, and denies he made no comments or asked
12 questions during the hearing. In fact, Petitioner
13 strenuously denied involvement in gang activity, brought to
14 the attention of committee members due process violations
15 and advised the committee that IGI Lt. Garcilazo had told
16 Petitioner that if he did not agree to become an informant
17 he was going to send Petitioner back to PBSP-SHU by any
18 means. Unfortunately, as has always been the practice at
19 these hearings, the committee did not record Petitioner's
20 statement nor have any audio recording devices available.
21 Underscoring the fact that Petitioner disagreed with the
22 committee action is the fact that Petitioner, on the very
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1 date that he attended the hearing, filed his very first CDC-
2 602 appeal challenging the validation.

3 13. Petitioner admits he has attended each and every
4 classification committee hearing reviewing his continued
5 segregation, and denies he has never asked questions or made
6 comments at these hearings. A review of the exhibits
7 attached to the initial Petition shows Petitioner has
8 consistently attempted to make his statements part of the
9 official record and yet has been consistently denied.
10
11
12

13 14. Petitioner admits that on March 11, 2004, he
14 submitted a CDC-602 appeal challenging his validation, and
15 asserted that the source items had not been properly
16 disclosed and, further, that he was not a member of a prison
17 gang nor involved in gang activity.
18
19

20 15. Petitioner admits that CDC-1030 Disclosure Forms
21 are generally used to disclose confidential information to
22 prisoners.
23

24 16. Petitioner admits that on April 20, 2004, he was
25 provided with three CDC-1030 forms which described, in
26 ambiguous terms, the allegations of gang activity contained
27 in Petitioner's prison file. Petitioner asserts that the
28
29

1 first and only time he has ever been provided with specific
2 details of the charges against him was on June 5, 2006, by
3 CCII Hawkes. At that time Petitioner was able to address
4 each of the three source items and show why they did not
5 establish that he had been accepted into actual membership
6 of a gang (a position the Respondent's apparently accept at
7 this point), and why they did not provide a direct link to
8 verifiable acts of aiding and abetting, promoting or
9 furthering gang conduct. CCII Hawkes, by his own admission
10 (see Respondent's Return, Declaration, Exhibit E), indicates
11 that Petitioner is not, nor has he ever been a member of a
12 prison gang.
13

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17 17. Petitioner admits that after the three source
18 items relied on in the validation process were disclosed to
19 him on April 20, 2004, via the CDC-1030 Disclosure Forms, he
20 filed three separate CDC-602 appeals challenging each source
21 item as best he could with the limited information that was
22 disclosed. However, Petitioner asserts that he was never
23 interviewed as he should have been during the appeal process
24 and the issues raised in each of the appeals were never
25 addressed. On September 23, 2005, one and a half years after
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29

1 the appeals were first filed, the Director denied the
2 appeals stating that there was sufficient evidence to
3 support Petition's validation as an associate of a prison
4 gang. (See Return, Exhibit H).
5

6 18. Petitioner admits that all of the confidential
7 information contained in his prison file was disclosed to
8 him by CCII Hawkes on June 2, 2006, and he was advised a new
9 validation package was being submitted to the LEIU with a
10 recommendation that he be found to be a an active associate
11 of a prison gang based on 27 source items, some dating back
12 almost 20 years, some which had been present in the file
13 when the instant validation was made but not relied upon,
14 and others produced after Petitioner was validated.
15
16
17

18 Petitioner denies that this action afforded him the
19 requisite due process as alleged by Respondent because these
20 habeas proceedings required only that CCII Hawkes review the
21 validations process at issue to determine if the source
22 items relied on were disclosed in accordance with mandatory
23 provisions in the Code of Regulations, and if that evidence,
24 pursuant to specific criteria established Petitioner was
25 properly classified a member of a prison gang. Respondent
26
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1 urges the Court to rule that -- even if state law was
2 violated -- that it should make no difference as Petitioner
3 may soon be classified as active associate based on the new
4 validation package recently submitted to the LEIU. As
5 mentioned above, Respondent and CCII Hawkes completely
6 misread or misinterpret the regulations relevant to
7 Petitioner's validation and now claim that only one source
8 item is necessary to impose an indeterminate term of
9 segregation. This, of course, is simply not true by the
10 plain language of the statute.
11
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14

15 19. Petitioner denies that he has not established
16 grounds for habeas relief and, by Respondent's Return,
17 asserts that it has been shown how prison officials, acting
18 in bad faith, and with utter disregard for due process and
19 the Code of Regulations, illegally imposed an indeterminate
20 term of segregation based upon an erroneous decision that
21 Petitioner is a member of a prison gang.
22
23

24 20. Petitioner further denies any and all other
25 allegations raised by Respondent that are not specifically
26 admitted herein and asserts that his constitutional right to
27
28
29

1 be free from long-term segregation has been violated by the
2 actions of prison officials.

3 Conclusion

4
5 Accordingly, Petitioner submits that the Petition
6 should be Granted, Petitioner's validation as a member of a
7 prison gang be held to have been illegally imposed.
8
9 Petitioner further argues that the Court should rule the
10 three source items were not properly disclosed and do not
11 establish that Petitioner has been active in gang activity
12 by reference to specific and verifiable acts seen to aid and
13 abet, further or promote a prison gang. In addition,
14
15 Petitioner respectfully requests that this Court Order that
16 Petitioner be released to the general population of a prison
17 commensurate with his proper custody and classification
18 designation.
19
20
21

22 Respectfully Submitted,
23

24 Date: _____

25 George M. Mavris, Attorney
26
27
28
29

MEMORANDUM OF POINTS AND AUTHORITIES

Summary of Argument

The Petition for Habeas Corpus relief must be granted on the grounds that (1) Petitioner's due process rights were violated when they failed to provide him with the basis for his gang validation prior to it being submitted to the Law Enforcement Investigations Unit ("LEIU") and (2) Respondent's erroneously conclude that "re-validation" occurs with only one source item as opposed to three. California Code of Regulations 3378(f)(2) provides: "[t]he procedures relating to the initial validation or rejection of gang members or associates described in this section shall be followed when reviewing the present status of an inactive gang member or associate." (emphasis added). Thus, the initial validation, like the review of the inactive status, requires three source items.

A. Due Process Requirements

In prison gang validations, due process requires: (1) prison officials must hold an informal non-adversarial hearing within reasonable time after the prisoner is segregated; (2) prison officials must inform the prisoner of the charges against him or their reasons for considering segregation; and (3) prison officials must allow the prisoner to present his views.

1 Toussaint v. McCarthy, 918 F. 2d 1080, 1100-1101 (9th Cir. 1986),
2 cert. Denied, 481 U.S. 1069, 95 Led.2d871, 107 Su. Ct. 2462
3 (1987) (holding that administrative segregation requires notice
4 of charges and an opportunity to present one's views).

5
6 Furthermore, the Ninth Circuit requires that the official
7 charged with deciding to retain the inmate in segregation must be
8 the official to whom the inmate presents his views. Toussaint v.
9 McCarthy, 918 F. 2d 752 (9th Cir.1990). The U.S. Supreme Court
10 similarly decided that due process affords prisoners "an
11 opportunity to present his views" to the official "charged with
12 deciding whether to transfer him to administration segregation."
13 Hewitt v. Helms, 459 U.S. 460, 476, 74 L Ed. 2d 675, 103 S. Ct.
14 864 (1983).
15

16
17 Here, Petitioner was validated by the LEIU and then ICC
18 presided over *fait accompli* decision - as set by 15 CCR Sec..
19 3341.5(c) (A) (2) - to house Petitioner in the SHU.
20

21 Hence, under the requirements of due process, Petitioner
22 must have received notice of the source items used in his
23 validation prior to the decision by LEIU because it was LEIU'S
24 validation, not the subsequent review by ICC, which resulted in
25 an indeterminate SHU term.
26

27 Respondents admit that Petitioner was not given notice of
28 the source items until after the validation took place and
29

1 similarly, was first afforded the opportunity to present his
2 views at the ICC hearing held long after the validation approval
3 and resultant SHU term was decided.

4 The law requires that prison officials also must engage in
5 periodic review of a prisoner's confinement in the SHU that must
6 amount to more than "meaningless gestures." Toussaint v.
7 McCarthy, 801 F .2d 1080, 1104 (9th Cir. 1986); and Toussaint v.
8 Roland, 711 F Supp. 536, 540 n.11 (N.D.Cal. 1989) (citing
9 Toussaint v. Mc Carthy, 801 F 2d. at 1102) see also Morris v.
10 Cambra 1997 U.S. Dist. LEXIS 20647 at 3, citing Mims v. Shapp,
11 744 F. 2d 946, 951-52 (3rd Cir 1984). Here, there is no
12 indication that the ICC did anything more than rubber stamp the
13 decision by the LEIU on the gang validation. Such bogus hearings
14 meet the very definition of a Kangaroo Court: "a term
15 descriptive of a sham legal proceeding in which a person's rights
16 are totally disregarded and in which the result is a foregone
17 conclusion because of the bias of the court or other tribunal."
18 Blacks Law Dictionary, Fifth Edition.

19
20
21
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24 B. The "Re-Validation" Process Requires Three Sources

25 While it is true that --3378(F)(1) does allow for a prisoner
26 assigned to "inactive" status to be removed from the general
27 population, with only one source item, this is only the first
28 step of the process necessary to impose an indeterminate SHU term
29

for gang activity. Indeed, in clear and unambiguous language, --
3378(F)(2) states that once a prisoner has been removed from the
general population "the procedures relating to the initial
validation or rejections of gang members or associates as
described in this section [3378 (c) (1-8)] shall be followed when
reviewing the present status of an inactive gang member or
associate."

In other words, the Court, in issuing the OSC, was correct
when it identified that three independent source items are needed
to reassign a prisoners "active" status once he has been
classified as "inactive."

Because the requisite number of valid source items are
lacking, gang validation of Mr. Acuna is inappropriate.

C. Petitioner Has Been Prejudiced by Placement in the SHU

Surprisingly, the Respondent devotes a significant portion
of the Return to the argument that Petitioner has failed to show
how he has been prejudiced by being wrongfully placed in the SHU
when, as Respondent argues, he would have ended up there at some
point anyway.

It is well settled that placement in Administrative
Segregation poses an "atypical hardship" on an inmate. Hewitt v.
Helms, 459 U.S. 460, 476, 74 L Ed. 2d 675, 103 S. Ct. 864 (1983).

1 Placement in the SHU, as outlined in the United States
2 Supreme Court case of Sandin v. Connor, noted that placement in
3 the SHU "directly and inevitably affects the duration of a
4 sentence." 515 U.S. 483, 487. Once confined to the SHU, the
5 duration of Petitioner's sentence is lengthened because
6 California Board of Prison Terms refuses to parole any gang
7 associate. Medina v. Gomez, 1997 U.S. Dist. LEXIS 12208 at *3.
8 Petitioner's ability to earn conduct credits is also
9 significantly curtailed during the period of wrongful confinement
10 in SHU.
11
12

13 In addition, placement in the SHU deprives an inmate of job
14 placement opportunities, contact visits, educational
15 opportunities as well as the right to many other prison
16 privileges.
17

18 It is not rocket science to conclude that Petitioner is
19 prejudiced by being wrongfully held in the SHU for any period of
20 time.
21

22 Conclusion

23
24 Based on the foregoing, Petitioner respectfully requests
25 the this Petition be Granted, that the Court should declare
26 that Petitioner's validation as a member of a prison gang be
27 was illegally imposed. Further, the Court should rule that
28
29

1 the three source items were not properly disclosed and do
2 not establish that Petitioner has been active in gang,
3 activity by reference to specific and verifiable acts seen
4 to aid and abet, further or promote a prison gang.
5

6 Finally, Petitioner respectfully requests that the
7 Court Order that Petitioner be released to the general
8 population of a prison commensurate with his proper custody
9 and classification designation.
10

11 Date: 7/17/06

12 
13 George M. Mavris, Appointed Counsel
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PROOF OF SERVICE

Case Name: In Re Arcadio Acuna, on Habeas Corpus
Court: Del Norte County Superior Court
Case No.: HCPB 05-5242

I am a citizen of the United States, over the age of 18 years, and not a party to the above-entitled action. My business address is 1 Point Saint George Place, Crescent City, California 95531.

On July 17, 2006, I caused to be served

DENIAL TO RESPONDENT'S RETURN

on the interested party(ies) listed below, addressed as follows:

Pamela B. Hooley
Deputy Attorney General
P. O. Box 944255
Sacramento, CA 94244-2550

☒ **By Regular Mail.** By depositing a true copy thereof to the party(ies) set forth above, in a sealed envelope for collection and mailing on the date set forth above. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.


☐ **By Personal Service.** By personally delivering a true copy thereof to the party(ies) at the address(es) set forth above.

☐ **By Facsimile.** By faxing a true copy thereof to the party(ies) at the facsimile number(s) set forth above.

☐ **By Court Mailbox.** By placing a true copy thereof in the appropriate file folder located in the Court House.

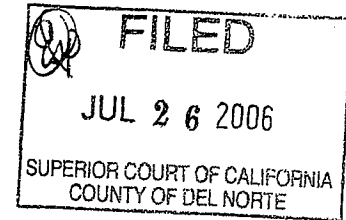
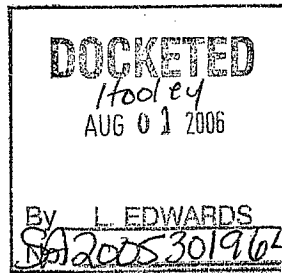
I declare under penalty of perjury under the laws of the State of the California that the foregoing is true and correct.

Executed July 17, 2006, at Crescent City, California, by:



Donna Lema, Declarant

EXHIBIT 8



E. ESPARZA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

IN RE:

Case No.: HCPB 05-5242

ARCADIO ACUNA,
C-43165,

ORDER SETTING STATUS REVIEW

Petitioner,

On Habeas Corpus.

The Court apparently was under the mistaken impression at the time it issued the Order to Show Cause that this was an initial validation and therefore stated that three source items were needed to validate. Petitioner now claims that three source items are required to revalidate. That interpretation is not consistent with practice or other interpretations even by prison advocacy groups. See, e.g., The California State Prisoners' Handbook §6.21A (3d ed. 2001).

Nevertheless, the Court is interested in whether the one-source requirement to revalidate applies indefinitely after an inmate is determined inactive. In this case, it appears that the most recent documented gang activity (prior to the incidents in question here) was in 1990. The Department Review Board's review of the initial validation document showed that Petitioner "did not have a significant EME role" at that time.


1 This raises the question whether after approximately 13 years of no
2 documented gang activity whether it is intended by the regulations, or is
3 appropriate, that only one source be required to revalidate the petitioner.

4 The Court finds that the failure to provide Form 1030's to petitioner denied
5 petitioner his due process and the ability to voice his views on the source used to
6 revalidate him. There was obvious error in classifying petitioner as a "member"
7 rather than "associate." The initial IGI and LEIU found that two source documents
8 met "validation requirements," although the *in camera* review caused this Court to
9 seriously doubt the reliability of those two sources and whether they met the
10 regulatory requirements for validation. All these concerns cause bring into question
11 whether the original revalidation met minimal constitutional requirements.

12 Nevertheless, respondent indicates it has initiated a new revalidation process
13 that is not yet complete. If only one source is required for revalidation, then it
14 would appear that giving petitioner the process that was initially deprived may cure
15 any defects in the previous revalidation process.

16 The matter is added to calendar on Friday, September 22, 2006, at 8:30 a.m.
17 for a status review of the new revalidation process. If the parties wish to file
18 additional Points and Authorities on the issue of the one-source requirement as it
19 applies to this case or other issues related to the Court's comments herein, they may
20 do so no later than September 15, 2006.

21 DATED: 7/24/06

22 
23 WILLIAM H. FOLLETT,
24 Judge of the Superior Court
25
26
27
28

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P)

I am a citizen of the United States and a resident of the County of Del Norte. I am over the age of eighteen (18) years and am not a party to the entitled action; my business address is 450 H St, Crescent City California 95531.

On 7/27/06, I served a copy of the **ORDER SETTING STATUS REVIEW**.
Dated 7/26/06 by depositing a true copy in the United States mail in Crescent City, California, in a sealed envelope with postage prepaid, addressed as follows:

ARCADIO ACUNA, C-43165
c/o Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

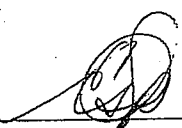
William J. Barlow
Attn: Litigation Department
c/o Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

George Mavris, Esq.
1 Point St. George Place
Crescent City, CA 95531

Pamela B. Hooley
Deputy Attorney General
Post Office Box 944255
Sacramento, CA 94244-2550

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that it was executed at Crescent City, California this date.

DATED: 7/27/06



Esperanza Esparza
Deputy Clerk